

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into this 22nd day of July, 2003, between the Department of Housing and Urban Development ("HUD") and Coldwell Banker Richard Smith, Realtors®. This Settlement Agreement applies to Coldwell Banker Richard Smith, Realtors®, its officers, directors, employees, real estate agents, successors, and assignees, and to all subsidiaries of Coldwell Banker Richard Smith, Realtors®, and their officers, directors, employees, real estate agents, successors, and assignees ("CB Smith"). HUD and CB Smith together shall be referred to herein as the "Parties."

Whereas, Section 8(a) of the Real Estate Settlement Procedures Act ("RESPA"), 12 U.S.C. § 2607(a), requires that "[n]o person shall give and no person shall accept any fee, kickback, or thing of value pursuant to any agreement or understanding, oral or otherwise, that business incident to or a part of a real estate settlement service involving a federally related mortgage loan shall be referred to any person.";

Whereas, HUD instituted an inquiry and investigation into certain practices of CB Smith, other real estate brokers, and real estate agents, relating to their acceptance of "virtual tours" for free or below cost from various title companies for residential real property that was offered for sale in Texas for the period commencing on January 1, 2000, through and including the date of this agreement;

Whereas, the term "virtual tour" refers to the internet-based service by which any person can access a website that displays photographs and information concerning residential real property offered for sale and can manipulate the site to obtain a panoramic view of the interior and/or exterior of the property;

Whereas, as a result of its inquiry and investigation, HUD asserts that by accepting virtual tours, CB Smith has accepted a "thing of value" in exchange for the referral of settlement services in violation of Section 8(a) of RESPA;

Whereas, CB Smith denies that its acceptance of "virtual tours" violates Section 8(a) of RESPA;

Whereas, the Parties desire to resolve any and all RESPA issues arising from the production of "virtual tours";

Whereas, this Settlement Agreement shall not constitute an admission of liability or fault on the part of CB Smith;

Whereas, the Parties desire to avoid further expenses and proceedings, and to reach a mutually satisfactory resolution of this matter by entering into this Settlement Agreement;

Whereas, this Settlement Agreement covers only those practices of CB Smith identified herein, known to and alleged by HUD regarding the acceptance of virtual tours in the State of Texas;

Whereas, by entering into this Settlement Agreement, HUD does not approve or authorize the use of "virtual tours" or any ancillary business;

Whereas, the terms set forth in this Settlement Agreement are an appropriate disposition of this matter and in the public interest;

NOW, THEREFORE, in consideration of the mutual promises and representations set forth herein, and in further consideration for HUD's reliance upon the substantial accuracy and good faith of CB Smith's representations and submissions, the Parties hereby agree and intend to be legally bound by the following:

(1) As of the date of execution of this Settlement Agreement, in connection with any acceptance of a virtual tour by CB Smith with respect to residential real property located within the state of Texas, CB Smith will comply with Section 8 of RESPA and with all of the provisions of this Settlement Agreement.

(2) Before accepting a virtual tour from a settlement service provider or a virtual tour that is sponsored by a settlement service provider, CB Smith shall pay a reasonable fee. CB Smith agrees not to accept a virtual tour for free. Any such fee paid that equals or exceeds the actual cost of the virtual tour to the virtual tour provider shall be deemed reasonable.

(3) CB Smith shall notify in writing or by electronic mail, each and every one of their real estate agents, whether they are employees or independent contractors, of this Settlement Agreement and of HUD's interpretation of Section 8 of RESPA as it concerns virtual tours. CB Smith will provide HUD with a copy of this notification within twenty (20) business days of the execution of this Settlement Agreement.

(4) Within twenty (20) business days of the execution of this Settlement Agreement, CB Smith shall make a payment of \$14,000.00, payable to the United States Treasury, and delivered to counsel for HUD.

(5) CB Smith waives, releases, and remits any and all claims directly or indirectly against HUD or HUD employees, whether known or unknown, with respect to this matter. HUD waives, releases, and remits any and all claims that it may have at the time of execution of this Settlement Agreement and that might be made with regard to the acceptance of virtual tours against CB Smith. HUD's waiver is based on its reliance upon the substantial accuracy and good faith of CB Smith's answers and representations made during HUD's investigation.

(6) Based on CB Smith's compliance with the terms of this Settlement Agreement, HUD will terminate its related investigation as of the date of this agreement and take no further enforcement action against CB Smith under Section 8 of RESPA as to this matter.

(7) HUD intends to apply and interpret the principles of Paragraph (2) of this Settlement Agreement and Section 8 of RESPA uniformly to all real estate brokers and real estate agents in the State of Texas.

(8) Each of the Parties shall bear its own attorneys' fees and costs.

(9) CB Smith agrees to cooperate with HUD in their ongoing investigation of violations of RESPA with regard to virtual tours in the state of Texas by providing such information in CB Smith's custody, possession or control as HUD may reasonably request in the course of such investigation and by making CB Smith personnel available for debriefing and testimony, upon reasonable notice and reasonable terms and conditions.

(10) This Settlement Agreement is a binding and final agreement that applies to and binds each of the persons or entities identified in the first paragraph of this Settlement Agreement. Provided, however, that CB Smith shall be entitled to relief from the provisions of Paragraph 2 in order to engage in conduct permitted by RESPA in the event that section 8 of RESPA is amended or in the event that the provisions of Regulation X interpreting and applying section 8 of RESPA are amended.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first stated above.

COLDWELL BANKER
RICHARD SMITH, REALTORS®

By: Richard A. Smith

Signature: 

Title: Chairman & CEO

U.S. DEPARTMENT OF HOUSING
AND URBAN DEVELOPMENT

By: John C. Weicher

Signature: 

Title: Assistant Secretary for Housing-
Federal Housing Commissioner

Coldwell Banker United, Realtors and Richard Smith Company
are assumed names of Sandiron, Ltd., a limited partnership,
whose general partner is Izora, LLC. This document is signed
by Richard A. Smith, President of Izora, LLC.